

NOTE: Appearing first is the Full Board summary which is the last meeting of the day. The committees will follow in the order of which time they were conducted. The Dealer Board staff felt it would benefit our readers to have the last meeting of the day appear first on the website.

~ 1ST DRAFT ~

Meeting Summary Motor Vehicle Dealer Board Monday, July 13, 2009

Chairman D.B. Smit called the Dealer Board meeting to order at 11:19 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. The roll was called and there were 18 Board members present. Present were members Lynn Hooper, Henry Jones, David Lacy, Wanda Lewark, Chip Lindsay, Thomas Moorehead, Pat Patrick, Frank Pohanka, Kevin Reilly, Larry Shelor, Joe Tate, Jimmy Whitten, Robert Woodall and Tommy Woodson. (Absent: Todd Haymore). Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Wanda Neely and Frank McCormick represented the Dealer Board. Eric Fiske represented the Attorney General's Office. Alice Weedon acted as Recording Secretary.

PUBLIC COMMENT

Bruce presented Vince Sheehy with his departure gift and thanked him for all his contributions to the Dealer Board. He indicated that Jonathan Blank will be at the September meeting for his departure gift. He also introduced T.K. Hughes as one of the new Board members.

The May 11, 2009 meeting summary was approved.

STATUTORY COMMITTEE REPORTS

Dealer Practices Committee:

Chairman Kevin Reilly summarized discussions held and actions that were taken during the Committee Meeting.

- **TABLED ISSUE: John Donovan, Extreme Suzuki, LLC and Advantage Sales & Leasing.** Chairman Kevin Reilly summarized for the Board the discussion held in the committee meeting regarding John Donovan, Extreme Suzuki, LLC and Advantage Sales & Leasing. Based on that discussion, Mr. Reilly made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning John Donovan, Extreme Suzuki, LLC and DRS Remarketing, LLC T/A Advantage Sales & Leasing for alleged violations of Va. Code Sections 46.2-1575(4) (Defrauding any retail buyer), (6) (having used deceptive acts or practices and (9) (having been convicted of any criminal act involving the business of selling vehicles). Based on due consideration, the Board believes no action should be taken against John Donovan. The Board hereby takes no further action against John Donovan.

Robert Woodall seconded. The motion carried unanimously.

- **Update: Insurance on Dealer Tags.** Insurance on dealer tags will be handled on case by case study and education versus civil penalty.

- **Porky's Auto Sales and George W. Hillman.** Chairman Kevin Reilly summarized for the Board the discussion held in the committee meeting regarding Porky's Auto Sales and George W. Hillman. Based on that discussion, Mr. Reilly made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning George W. Hillman and Porky's Auto Sales for alleged violations of Va. Sections 46.2-1531 (failure to have in his possession a properly executed and signed consignment contract for any vehicle he is offering for sale on consignment), 46.2-1532 (odometer disclosure), 46.2-1542 (improper issuance of 30 day tags), 46.2-1547 (failure to maintain liability insurance), 46.2-1550 (improper use of or permitting the improper use dealer's license plates), 46.2-1575(2) (failure to comply subsequent to receipt of a written warning), 46.2-1575(9) (having been convicted of a crime) and 46.2-1575(18) (failure to maintain automobile liability insurance). Based on due consideration, the Board believes that all licenses issued by the Board to Mr. Hillman should be suspended until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative. The Board hereby suspends all licenses issued by the Board to Mr. Hillman until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative. Based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Mr. Hillman in running his dealership. The Board hereby suspends all licenses and certificates issued by the Board to Mr. George W. Hillman until what time Mr. Hillman successfully completes the dealer-operator class.

Frank Pohanka seconded. The motion carried unanimously.

- **Galax Auto Sales and Robert D. Weatherman.** Chairman Kevin Reilly summarized for the Board the discussion held in the committee meeting regarding Galax Auto Sales and Robert D. Weatherman. Based on that discussion, Mr. Reilly made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Robert D. Weatherman t/a Galax Auto Sales for alleged violations of Va. Code Sections 46.2-1529 (failure to maintain all dealer records on the premises of the licensed location), 46.2-1548/1550 (improper use of or permitting the improper use dealer's license plates) and 46.2-1575(2) (failure to comply subsequent to receipt of a written warning). Based on due consideration, the Board believes that all licenses issued by the Board to Mr. Weatherman should be suspended until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative. The Board hereby suspends all licenses issued by the Board to Mr. Weatherman until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative and based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Mr. Weatherman in running his dealership. The Board hereby suspends all licenses and certificates issued by the Board to Mr. Robert D. Weatherman until what time Mr. Weatherman successfully completes the dealer-operator class.

Lynn Hooper seconded. The motion carried unanimously.

- **Advantage Auto Sales and Mohammad Mohassel.** Chairman Kevin Reilly summarized for the Board the discussion held in the committee meeting regarding Advantage Auto Sales and Mohammad Mohassel. Based on that discussion, Mr. Reilly made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Mohammad Mohassel and Advantage Auto Sales for alleged violations of Va. Code Sections 46.2-1533 (failure to maintain posted business hours) and 46.2-1575(2) (failure to comply subsequent to receipt of a written warning). Based on due consideration, the Board believes a civil penalty should be assessed against Mohammad Mohassel t/a Advantage Auto Sales. The Board hereby assesses a \$1,000 civil penalty against Mohammad Mohassel t/a Advantage Auto Sales. Based on due consideration, the Board

believes that all licenses issued by the Board to Mr. Mohassel should be suspended until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative. The Board hereby suspends all licenses issued by the Board to Mr. Mohassel until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative; and based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Mr. Mohassel in running his dealership. The Board mandates that Mr. Mohassel successfully complete the dealer-operator course by January 13, 2010. Failure to successfully complete the course by this date will result in a suspension of all licenses and certificates issued to Mr. Mohassel by the Board until what time Mr. Mohassel has successfully completed the course.

Robert Woodall seconded. The motion carried unanimously.

- **Auto Wholesalers of Orange and John W. Hawk.** Chairman Kevin Reilly summarized for the Board the discussion held in the committee meeting regarding Auto Wholesalers of Orange and John W. Hawk. Based on that discussion, Mr. Reilly made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning John W. Hawk and Auto Wholesalers of Orange for alleged violations of Va. Code violation(s) of VA Code Sections 46.2-1515 (failure to display current dealer certificate), 46.2-1516 (Supplemental sales location), 46.2-1529 (Failure to maintain all dealer required records), 46.2-1539 (inspections of vehicles required, in specific, safety inspection requirements), 46.2-1547 (failure to have liability insurance on his dealer plates), 46.2-1548/1550 (improper use of or permitting the improper use dealer's license plates) 46.2-1559 (Records to be kept by dealers; inspection), 46.2-1574 (failure to be responsible for the acts of the dealers salespersons) and 46.2-1575(2) (failure to comply subsequent to receipt of a written warning), (4) (Defrauding any retail buyer to the buyer's damage), (6) (having used deceptive acts or practices), (7) (Prohibits knowingly advertising by any means any assertion, representation, or statement of fact which is untrue, misleading, or deceptive in any particular relating to the conduct of the business licensed or registered or for which a license or registration is sought) and (18) (failure to maintain automobile liability insurance). Based on due consideration, the Board believes a civil penalty should be assessed against John W. Hawk t/a Auto Wholesalers of Orange. The Board hereby assesses a \$9,500 civil penalty against John W. Hawk t/a Auto Wholesalers of Orange. Based on due consideration, the Board believes that all licenses issued by the Board to Mr. Hawk should be revoked. The Board hereby revokes all licenses issued by the Board to Mr. Hawk.

Frank Pohanka seconded. The motion carried unanimously.

- **Titan Motors, Inc. and Babe Enaytullah.** Chairman Kevin Reilly summarized for the Board the discussion held in the committee meeting regarding Titan Motors, Inc. and Babe Enaytullah. Based on that discussion, Mr. Reilly made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Enaytullah Babe t/a Titan Motors, Inc. for alleged violations of VA Code Sections 46.2-1515 (failure to display current dealer certificate), 46.2-1516 (Supplemental sales location), 46.2-1529 (Failure to maintain all dealer required records), 46.2-1533 (failure to maintain posted business hours) 46.2-1550 (permit the illegal use of dealer's plates) and 46.2-1575(2) (failure to comply with a written warning) and (18) (failure to maintain liability insurance). Based on due consideration, the Board believes a civil penalty should be assessed against Enaytullah Babe t/a Titan Motors, Inc. The Board hereby assesses a \$1,000 civil penalty against Enaytullah Babe t/a Titan Motors, Inc. Based on due consideration, the Board believes that all licenses issued by the Board to Mr. Enaytullah Babe should be suspended until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative. The Board hereby suspends all licenses issued by the Board to Mr. Enaytullah

Babe until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative.

Thomas Moorehead seconded. The motion carried unanimously.

- **M & I Auto Sales, Inc. and Issmail Alchaleh.** Chairman Kevin Reilly summarized for the Board the discussion held in the committee meeting regarding M & I Auto Sales, Inc. and Issmail Alchaleh. Based on that discussion, Mr. Reilly made the following motion: The Board has reviewed and considered the facts and evidence and the report of a formal hearing as prepared by the hearing officer concerning Issmail Alchaleh and M & I Auto Sales, Inc for alleged violations of Va. Code Sections 46.2-1533 (failure to maintain posted business hours) and 46.2-1575(2) (failure to comply subsequent to receipt of a written warning). Based on due consideration, the Board believes a civil penalty should be assessed against Issmail Alchaleh t/a M & I Auto Sales, Inc. The Board hereby assesses a \$1,000 civil penalty against Issmail Alchaleh t/a M & I Auto Sales, Inc. Based on due consideration, the Board believes that all licenses issued by the Board to Mr. Issmail Alchaleh should be suspended until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative. The Board hereby suspends all licenses issued by the Board to Mr. Issmail Alchaleh until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative. Based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Mr. Issmail Alchaleh in running his dealership. The Board hereby suspends all licenses and certificates issued by the Board to Mr. Issmail Alchaleh until such time Mr. Issmail Alchaleh successfully completes the dealer-operator class.

Joe Tate seconded. The motion carried unanimously.

- **Variance Request: Jerry Farmer and Jerry's Automotive.** Kevin Reilly made the following motion: Be it resolved that in accordance with the authority given to the Board to modify the minimum hours requirements as set-out in § 46.2-1533, that Jerry Farmer, Inc T/A Jerry's Automotive Sales and Service (dealer # 833) be granted a variance from the requirement of being opened for business at least 10 hours per week between the hours of 9:00 am and 5:00 pm, Monday through Friday provided that the dealership be open a minimum of 5 hours per week between the hours of 9:00 am and 5:00 pm, Monday through Friday and a total of 20 hours each week. This variance shall be in effect through September 30, 2010.

Henry Jones seconded. The motion carried unanimously.

Licensing Committee

Chairman Chip Lindsay summarized discussions held and actions that were taken during the Committee Meeting.

- **Update: Continuing Education Regulations.** Chairman Chip Lindsay summarized for the Board the discussion held in the committee meeting regarding Continuing Education Regulations.
- **George H. Best, III.** Chairman Chip Lindsay summarized for the Board the discussion held in the committee meeting regarding Mr. George H. Best, III. Based on that discussion, Mr. Lindsay made the following motion: The Board has reviewed and considered the facts and evidence and the

report of an informal fact finding conference as prepared by the hearing officer concerning George H. Best for alleged violations of Va. Code Sections 46.2-1575 (1) having made a material misstatement in an application for a license. Based on due consideration, the Board believes a civil penalty should be assessed against George H. Best. The Board hereby assesses a \$500 civil penalty against George H. Best.

Frank Pohanka seconded. The motion carried unanimously.

Advertising Committee

Chairman Lynn Hooper summarized discussions that were held during the Committee Meeting.

Transaction Recovery Fund Committee:

Chairman Larry Shelor summarized discussions held and actions that were taken during the Committee Meeting.

- **Masahiro Sato and Field Auto City, Inc.** Chairman Larry Shelor summarized for the Board the discussion held in the Committee meeting regarding Masahiro Sato and Field Auto City, Inc. Based on that discussion and the recommendations in these cases, Mr. Shelor made the following motion: Pursuant to § 46.2-1527.1 et. seq. of the Code of Virginia, which is known as the Motor Vehicle Transaction Recovery Fund (“Fund”), the Board has reviewed and considered a claim submitted for payment from the Fund and based on due consideration and recommendation of the hearing officer, the Board believes the following claims should be denied and not payable from the Fund. The Board hereby denies the following claim and payments amount subject to compliance by the claimant with statutory requirements:

Masahiro Sato and Field Auto City, Inc.	\$16,478.78
--	--------------------

Joe Tate seconded. The motion carried unanimously.

- **Mark C. Johnson and Vertex Auto Sales and Andy D. & Lora S. Kees and RSD Motors and Rodney J. Price.** Chairman Larry Shelor summarized for the Board the discussion held in the Committee meeting regarding Mark C. Johnson and Vertex Auto Sales and Andy D. & Lora S. Kees and RSD Motors and Rodney J. Price. Based on that discussion and the recommendations in these cases, Mr. Shelor made the following motion: Pursuant to § 46.2-1527.1 et. seq. of the Code of Virginia, which is known as the Motor Vehicle Transaction Recovery Fund (“Fund”), the Board has reviewed and considered a claim submitted for payment from the Fund and based on due consideration and recommendation of the hearing officer, the Board believes the following claims should be payable from the Fund. The Board hereby approves and reaffirms the following claims and payment amount subject to compliance by the claimant with statutory requirements:

Mark C. Johnson and Vertex Auto Sales	\$3,785.00
Andy & Lora Kees and RSD Motors and Rodney J. Price	\$20,000.00

Robert Woodall seconded. The motion carried unanimously.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

- **Executive Director's Report.** Bruce Gould reported that the Motor Vehicle Dealer Board closed out the fiscal year with a higher balance than when we started.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting will be scheduled for September 14, 2009.

There being no further business to come before the Motor Vehicle Dealer Board, Vice-Chairperson Lewark adjourned the meeting at 11:55 a.m.

Meeting Summary Dealer Practices Committee Monday, July 13, 2009

Chairman Kevin Reilly called the Dealer Practices Committee meeting to order at 8:36 a.m. in Room 702 of the DMV Headquarters Building at 2300 W. Broad Street in Richmond. Present were Committee members David Lacy, Wanda Lewark, Chip Lindsay, Thomas Moorehead, Matt Queen, Larry Shelor, Robert Woodall, Sally Woodson and Tommy Woodson. (Absent: T.K. Hughes). Other Board members present: Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Wanda Neely and Frank McCormick represented the Dealer Board. Eric Fiske represented the Attorney General's Office.

The May 11, 2009 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

Update: May Actions. Peggy Bailey reported on the actions taken at the Dealer Practices Committee meeting on May 11, 2009.

- **Update: Michael H. Magulies.** On May 15, 2009, staff received a letter from Mr. Magulies requesting to be put on the July Agenda. Mr. Magulies requested that he be allowed to appeal his case. Mr. Reilly indicated that because he missed the deadline to file an appeal, he should probably hire an attorney to provide advice.
- **TABLED ISSUE: John Donovan, Extreme Suzuki, LLC and DRS Remarketing, LLC T/A Advantage Sales & Leasing.** On March 10, 2009, an informal fact-finding conference was conducted to address the alleged violation(s) of VA Code Sections 46.2-1575(4) (Defrauding any retail buyer), (6) (having used deceptive acts or practices) and (9) (having been convicted of any criminal act involving the business of selling vehicles). Based on the information provided at the conference, the hearing officer recommended that the Board revoke all the licenses of John Donovan, return DMV property and assess a civil penalty of \$1,000.00 for each violation of (4), (6) and (9) for a total civil penalty of \$3,000.00. At the May meeting, it was agreed to table this issue so that Mr. Donovan could provide evidence to the Board that he obtained titles and submitted fees to DMV that he collected on behalf of his customers. On June 30, 2009, the Board received sufficient evidence that Mr. Donovan made the customers whole.

Motion was made by Robert Woodall to take no further action against John Donovan as he had already surrendered his licenses and the dealership is closed and all customers had been made whole. Tommy Woodson seconded. The motion carried unanimously.

- **Update: Insurance on Dealer Tags.** Bruce Gould indicated that the field representatives are calling the insurance companies that cover the dealer's tags and they have reported that about 3 out of 10 of the dealers are either uninsured or under insured. Bruce suggested that a warning letter could be sent on a first offense, and a civil penalty for a second offense. He also suggested that a reminder of insurance requirement be included in their renewal letter. The consensus of

the Committee was to look at each situation and determine if a warning or a civil penalty should be assessed.

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

Review and Action: Informal Fact-Finding Conference:

- **Porky's Auto Sales and George W. Hillman.** On April 16, 2009, an informal fact-finding conference was conducted to address the alleged violation(s) of VA Code Sections 46.2-1531 (failure to have in his possession a properly executed and signed consignment contract for any vehicle he is offering for sale on consignment), 46.2-1532 (odometer disclosure), 46.2-1542 (improper issuance of 30 day tags), 46.2-1547 (failure to maintain liability insurance), 46.2-1550 (improper use of or permitting the improper use dealer's license plates), 46.2-1575(2) (failure to comply subsequent to receipt of a written warning/willful failure to comply), 46.2-1575(9) (having been convicted of a crime related to the business of selling motor vehicles) and 46.2-1575(18) (failure to maintain automobile liability insurance). Based on the information provided at the conference, the hearing officer recommended that Mr. Hillman be permitted to retain his license with the admonition that any signs of him not obeying the code or rules and regulations will revoke his license. The field representative should be urged to pay close attention to Hillman and Porky's and try to keep him on the right path. It was further recommended that Mr. Hill pay a \$500 civil penalty.

Motion was made by Robert Woodall to take the Dealer-Operator Course and assess a civil penalty of \$250. Matt Queen seconded.

Substitute motion was made by Wanda Lewark to suspend the dealer's license during which time Mr. Hillman is to successfully take the Dealer-Operator Course and suspend all licenses issued by the Board to Mr. Hillman until such time as he has had a satisfactory inspection by a Motor Vehicle Dealer Board Field Representative. Sally Woodson seconded. All in favor: 8 (Reilly, T. Woodson, Lewark, Lindsay, Moorehead, Shelor, S. Woodson and Woodall. Opposed: 2 (Lacy and Queen). The motion carried.

- **Galax Auto Sales and Robert D. Weatherman.** On June 4, 2009, an informal fact-finding conference was conducted to address the alleged violation(s) of VA Code Sections 46.2-1529 (failure to maintain all dealer records on the premises of the licensed location), 46.2-1548/1550 (improper use of or permitting the improper use dealer's license plates) and 46.2-1575(2) (failure to comply subsequent to receipt of a written warning/willful failure to comply). Based on the information provided at the conference, the hearing officer recommended that Mr. Weatherman attend the Dealer-Operator Course and within 30 days of the successful completion of the course, an inspection of Galax Auto Sales should be conducted.

Motion was made by Robert Woodall to suspend the licenses until he successfully takes the Dealer-Operator Course and have a satisfactory inspection. David Lacy seconded. The motion carried unanimously.

- **Advantage Auto Sales and Mohammad Mohassel.** On June 10, 2009, an informal fact-finding conference was conducted to address the alleged violation(s) of VA Code Sections 46.2-1533 (failure to maintain posted business hours) and 46.2-1575(2) (failure to comply subsequent to receipt of a written warning/willful failure to comply). Based on the information provided at the conference, the hearing officer recommended that Mr. Mohassel have his license revoked and pay a civil penalty of \$1,000.00.

Mr. Mohassel and his attorney, Mr. Jerry Sonies, were both present and both spoke on Mr. Mohassel's behalf.

Motion was made by Chip Lindsay to assess a civil penalty of \$1,000, suspend all licenses until which time he has a satisfactory inspection by a Dealer Board field representative, and successfully takes the Dealer-Operator Course within 6 months. Larry Shelor seconded. The motion carried unanimously.

- **Auto Wholesalers of Orange and John w. Hawk.** On June 9, 2009, an informal fact-finding conference was conducted to address the alleged violation(s) of VA Code Sections 46.2-1515 (failure to display current dealer certificate), 46.2-1516 (Supplemental sales location), 46.2-1529 (Failure to maintain all dealer required records), 46.2-1539 (inspections of vehicles required, in specific, safety inspection requirements), 46.2-1547 (failure to have liability insurance on his dealer plates), 46.2-1548/1550 (improper use of or permitting the improper use dealer's license plates) 46.2-1559 (Records to be kept by dealers; inspection), 46.2-1574 (failure to be responsible for the acts of the dealers salespersons) and 46.2-1575(2) (failure to comply subsequent to receipt of a written warning/willful failure to comply), (4) (Defrauding any retail buyer to the buyer's damage), (6) (having used deceptive acts or practices), (7) (Knowingly advertising by any means any assertion, representation, or statement of fact which is untrue, misleading, or deceptive) and (18) (failure to maintain automobile liability insurance). Based on the information provided at the conference, the hearing officer recommended that the dealer's license be revoked and assessed a civil penalty of \$9,500.00

Motion was made by Robert Woodall to accept the hearing officer's recommendation. Tommy Woodson seconded. The motion carried unanimously.

- **Titan Motors, Inc. and Enaytullah Babe.** On June 1, 2009, an informal fact-finding conference was conducted to address the alleged violation(s) of VA Code Sections 46.2-1515 (failure to display current dealer certificate), 46.2-1516 (Supplemental sales location), 46.2-1528 (Improper conduct of business), 46.2-1529 (Failure to maintain all dealer required records), 46.2-1550 (permit the illegal use of dealer's plates) and 46.2-1575(2) (failure to comply with a written warning/willful failure to comply) and (18) (failure to maintain liability insurance). Based on the information provided at the conference, the hearing officer recommended that Mr. Babe should be suspended as a dealer and assessed a civil penalty of \$1,000.00

Mr. Babe was present and spoke on his own behalf. Pete Iaracci also consulted Mr. Babe in the past and spoke on his behalf as well.

Motion was made by Robert Woodall to accept the hearing officer's recommendation, but to include suspension of his license only until he has a satisfactory inspection by the Dealer Board field representative. Larry Shelor seconded. Wanda Lewark sustained because she indicated that she has worked with Mr. Babe's attorney in the past. The motion carried.

Review and Action: Formal Hearing:

- **M & I Auto Sales, Inc. and Issmail Alchaleh.** Historical overview leading up to the formal hearing: On November 18, 2008, an informal fact-finding conference was conducted to address the alleged violation(s) of VA Code Sections 46.2-1533 (failure to maintain posted business hours) and 46.2-1575(2) (failure to comply subsequent to receipt of a written warning/willful failure to comply). Based on the information provided at the hearing, the hearing officer recommended that Mr. Alchaleh have his license revoked and be assessed a civil penalty of \$2,000. Bruce Gould, Executive Director of the Dealer Board, agreed with the hearing officer's findings and gave Mr. Alchaleh until February 2, 2009 to pay the civil penalty and turn over all licenses and dealer plates or to appeal the decision. On January 27, 2009, Mr. Alchaleh appealed and requested a formal hearing. On April 7, 2009, a formal hearing was conducted to address the alleged violation(s) as listed above. Based on the information provided at the hearing, the hearing officer recommended that Mr. Alchaleh should have all his licenses revoked and be assessed a civil penalty of \$2,000.00.

Mr. Alchaleh, his son and his attorney, Bill Lehner were present and spoke on behalf of Mr. Alchaleh.

Motion was made by Wanda Lewark to assess a civil penalty of \$1,000, suspend all licenses until he has a satisfactory inspection by a Dealer Board field representative and successfully takes the Dealer-Operator Course. Matt Queen seconded. The motion carried unanimously.

NEW BUSINESS FROM THE FLOOR

- **Jerry Farm and Jerry's Automotive Service and Sales.** Bruce Gould reported that for the past 11 years, Jerry Farmer has requested a variance in hours for his dealership, Jerry's Automotive Sales and Service, because of his teaching schedule.

Motion was made by Robert Woodall to approve Mr. Farmer's variance request in hours. Tommy Woodson seconded. The motion carried unanimously.

The next meeting was scheduled for September 14, 2009.

The meeting adjourned at 10:27 a.m.

Meeting Summary
Dealer Licensing Committee
Monday, July 13, 2009

Chairman Chip Lindsay called the Dealer Licensing Committee meeting to order at 10:28 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members Lynn Hooper, Henry Jones, Pat Patrick, Frank Pohanka, Joe Tate, Jimmy Whitten and Robert Woodall. (Absent: T.K. Hughes). Other Board members present: Sally Woodson, Thomas Moorehead, David Lacy, Larry Shelor, Kevin Reilly, D.B. Smit, Wanda Lewark, Matt Queen, Tommy Woodson. Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Wanda Neely and Frank McCormick represented the Dealer Board. Eric Fiske represented the Attorney General's Office.

The May 11, 2009 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

- **Update: May Actions.** Peggy Bailey reported on the actions taken at the Licensing Committee meeting on May 11, 2009.
- **Update: Dealer-Operator Continuing Education.** Bruce Gould indicated that the regulations have been submitted to and subsequently "approved" by the Attorney General's Office. The proposed regulations are now being reviewed by the Department of Planning and Budget. Once DPB completes its review, the proposed regulations will be forwarded to the Governor's Office for his review and approval. Hopefully by the next Board meeting, they will have been approved by the Governor's Office. Once the Governor's office approves, the 60 day public comment period can begin.

OLD BUSINESS FROM THE FLOOR:

There was no old business from the floor.

NEW BUSINESS

Review and Action: Informal Fact-Finding Conference:

- **George H. Best, III, Salesperson.** On June 11, 2009, an informal fact-finding conference was conducted to address the alleged violation(s) of VA Code Section 46.2-1575(1) (having made material misstatements on an application for a vehicle salesperson's license). Based on the information provided at the conference, the hearing officer recommended that a civil penalty of \$500 be assessed and the he be allowed to renew his sales license.

Mr. Best was present and spoke on his own behalf.

Motion was made by Pat Patrick to accept the hearing officer's recommendation. Joe Tate seconded. The motion carried unanimously.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for September 14, 2009

The meeting adjourned at 10:38 a.m.

Meeting Summary
Advertising Committee
Monday, July 13, 2009

Chairman Lynn Hooper called the Advertising Committee meeting to order at 10:38 a.m. in Room 702, at DMV Headquarters, 2300 West Broad Street, Richmond, Virginia. Present were Committee members Matt Queen, Kevin Reilly, Larry Shelor, Joe Tate, Sally Woodson, Jimmy Whitten and Thomas Woodson (Absent: Todd Haymore). Other Board members present: Thomas Moorehead, Pat Patrick, David Lacy, Kevin Reilly, Frank Pohanka, D.B. Smit, Wanda Lewark, Chip Lindsay, Henry Jones, Robert Woodall. Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Wanda Neely and Frank McCormick represented the Dealer Board. Eric Fiske represented the Attorney General's Office.

The May 11, 2009 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

The next meeting was scheduled for September 14, 2009.

NEW BUSINESS FROM THE FLOOR

Lynn went over the advertising violations and indicated that there were fewer violations on this report; however, more penalties were assessed due to repeated violations.

Bruce indicated that since the "Cash for Clunkers" program began, he has made it his mission to watch this very carefully and will ensure that all advertisements relating to this will be reviewed aggressively.

The meeting adjourned at 10:47 a.m.

Meeting Summary
Transaction Recovery Fund Committee
Monday, July 13, 2009

Chairman Larry Shelor called the Transaction Recovery Fund Committee meeting to order at 10:47 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members: Henry Jones, David Lacy, Wanda Lewark, Pat Patrick, Frank Pohanka, Matt Queen and Joe Tate. (Absent: Todd Haymore). Other Board members present: Sally Woodson, Thomas Moorehead, Kevin Reilly, D.B. Smit, Chip Lindsay, Lynn Hooper, Jimmy Whitten, Robert Woodall, Tommy Woodson. Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Wanda Neely and Frank McCormick represented the Dealer Board. Eric Fiske represented the Attorney General's Office.

The May 11, 2009 summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

- **REVISIT: Masahiro Sato and Field Auto City, Inc.** On July 10, 2004, Mr. Sato entered into an agreement with Field Auto City to purchase a 1998 Jeep Cherokee for a total purchase price of \$7,524.61. Mr. Sato made a down payment of \$2,000 and he was issued a 30-day temporary certificate to the vehicle. At that time, Field Auto City did not provide Mr. Sato with the certificate of title, but promised through one of its agents they would deliver title to him. On July 13, 2004, Mr. Sato went to the Department of Motor Vehicles (Government of the District of Columbia) to have the vehicle inspected. The vehicle passed the safety inspection, however, the Emission Inspection failed.

On July 24, 2004, Mr. Sato spent \$132.58 on repairs and an additional \$147.14 on August 10, 2004 for repairs on the vehicle in order for the vehicle to pass inspection. On August 19, 2004, Mr. Sato spent \$25.00 to have the vehicle re-inspected and for a registration sticker. On August 20, September 16 and November 19, 2004, Mr. Sato visited Field Auto City and obtained more temporary tags. On January 14, 2005 and February 11, 2005, Mr. Sato obtained yet two more sets of temporary tags. On March 10, 2005, Mr. Sato visited Field City Auto again to inquire about permanent license plates and he was informed that the ownership of the dealership had changed and that the new company could not provide him with any assistance regarding his transactions with Field City Auto.

On September 28, 2005, Thomas Willcox, attorney for Mr. Sato, filed a Complaint and Demand for Jury Trial in the District of Columbia Superior Court/Civil Division for breach of title and breach of the Virginia Consumer Protection Act against Field Auto City. On June 27, 2006, the District of Columbia Superior Court/Civil Division awarded Mr. Sato judgment against Field City Auto in the amount of \$17,000 plus an award of attorney fees in the amount of \$2,775.00. On April 4, 2007, Mr. Willcox submitted all the appropriate paperwork and documentation for consideration of payment from the Fund. On May 31, 2007, the Dealer Board staff contacted Mr. Willcox regarding the disposition of the vehicle and whether or not he had received the Virginia title that had been issued in Mr. Sato's name of September 7, 2006.

Mr. Willcox indicated they had received the title and that on behalf of Mr. Sato later sold the vehicle in April of 2007 for \$4,100. Additionally, the Dealer Board staff inquired on whether he was planning to have the judgment from the District of Columbia recognized in a court of competent jurisdiction in the Commonwealth. On September 6, 2007, Mr. Willcox via facsimile submitted to the Dealer Board a copy of the Praecipe Requesting Entry of Foreign Judgment, in which shows Judgment was filed on August 2, 2007, with Clerk of the Circuit Court Fairfax County.

After carefully reviewing all documentation, staff concluded that they must rely on the expertise of the Recovery Fund Committee and Full Board in determining whether to approve or deny the claim. Staff observed that although it is apparent the dealer was in violation of the Licensing Laws for the issuance of (7) temporary tags and not obtaining title within the 30 day requirement, there are some concerns that need to be considered regarding Mr. Sato's claim:

- The Dealer Board was not given any prior notification, pursuant to §46.2-1527.4
- The Buyer's Order reflects that the vehicle was purchased "As Is"
- Judgment amount of \$17,000 plus attorney fees \$2,775.00
- Mr. Sato's actual damages total \$13,703.78, the Recovery Fund Committee and Board will need to determine what amounts are compensable for payment from the Fund.
 1. Payment to Field Auto City: \$7,524.61
 2. DC DMV Inspection: \$50.00
 3. Repairs: \$567.93
 4. Parking lot charges: \$1,500.00
 5. Car Rental: \$4,061.24
- On September 7, 2006, approximately, 2 years later, a Virginia title was issued to Mr. Sato.
- In April of 2007, Mr. Willcox confirmed that the vehicle has since been sold for \$4,100.

On October 10, 2007, an informal fact-finding conference was conducted and based on the information presented at the conference, the hearing officer conducting the conference supported the recommendation of the Dealer Board staff to defer this matter to the expertise of the Recovery Fund Committee and Full Board to determine approval or denial of the claim.

This claim was tabled until the January 2008; however, Mr. Willcox did not bring the matter back before the Board at that time. Mr. Willcox obtained an amended order dated March 6, 2009 and the judgment amount is different. The Board is now in a position to re-visit this issue.

Motion was made by Frank Pohanka to deny the claim based on failure of notification of claim and the car was sold as is. Matt Queen seconded. All in favor: 7 (Shelor, Lacy, Lewark, Queen, Patrick, Frank Pohanka, Tate). Opposed: 1 (Jones). The motion carried.

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

(New Board member T.K. Hughes came in at 11:10 a.m.)

NEW BUSINESS

Review and Action: Informal Fact-Finding Conference Results:

- **Mark C. Johnson and Vertex Auto Sales.** On May 15, 2007, Mr. Johnson entered into a contract to purchase a 1999 Volkswagen Passat for a total purchase price of \$4,700.00. At the time of purchase the sales agent indicated that the vehicle was in good running condition. Mr. Johnson made a \$3,000 deposit. Included in the purchase the dealership provided Mr. Johnson with a Warranty on the power train for a period of 30 days or 11,000 miles. He agreed to pay 50% on parts and labor. The day after the purchase, the vehicle stopped running due to problems with the power train. The vehicle sat on the dealerships lot for two weeks. On May 31, 2007, Mr. Johnson was told by an agent of the dealership that he must pay \$475.00 to order a new turbo charger, representing of what it would cost for the necessary parts to repair the vehicle, in which Mr. Johnson paid this amount immediately.

Despite the fact that Mr. Johnson paid for what the dealer's agent had indicated was for the necessary parts for the vehicle, the dealership failed and refused to honor the warranty or even order the necessary parts. Mr. Johnson made several trips to the dealership and finally one of the agents indicated that the problem with the vehicle was not covered by the warranty, which was a material breach of the contract. The dealer had no intention of honoring the warranty, the dealer had not registered or titled the vehicle in Mr. Johnson's name within the 30 days of purchase and the dealer sold the vehicle to someone else.

Mr. Johnson sought legal counsel (Bruce C. Phillips, Esquire) to pursue the dealership in court for Rescission of Contract and for violations of the Virginia Consumer Protection Act. On November 3, 2008, the Fredericksburg General District Court awarded Mr. Johnson judgment against Vertex Auto Sales in the amount of \$3,475.00 plus \$250 for attorney fees and \$60 in court costs. On January 21, 2009, Mr. Phillips submitted to the Dealer Board documentation for consideration of payment from the Fund. On January 23, 2009, the Dealer Board staff requested additional documentation in order to complete the review process of the claim. On January 28, 2009, the staff received the requested documentation.

After carefully reviewing all the documentation, staff has requested that the Recovery Fund Committee and Full Board approve \$3,785.00 (\$3,475.00 judgment, \$250 attorney fees and \$60 court costs). On June 10, 2009, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended to support the findings of staff and approve payment of \$3,785.00.

Motion was made Frank Pohanka to accept the hearing officer's recommendation. Pat Patrick seconded. The motion carried unanimously.

- **Andy D. & Lora S. Kees and RSD Motors and Rodney J. Price.** On February 20, 2008, Andy and Lora Kees transacted business with Rodney J. Price and RSD Motors, Inc. by trading-in a 2005 Ford 500 and purchased a 2007 Dodge Ram with a purchase price of \$26,990.00. In addition, Mr. Price collected a \$79.96 process fee; \$1,353.50 VA sales tax, \$53.98 for dealer's business tax and \$15.50 for the title and license fee making the total purchase price of \$28,492.93. The Kees made a deposit of \$5,000 and Mr. Price arranged financing for the balance of \$23,492.93 through SECU Credit Union of Baltimore, Maryland. Mr. Price then represented to the Kees that the trade-in amount on the 2005 Ford would pay off the amount owed on the vehicle (between \$15,000 and \$16,000) to the lender Ford Motor Credit.

Later, the Kees learned the traded-in vehicle loan with Ford Motor Credit had not been paid-off and the title to the vehicle they purchased had never been forwarded to SECU Credit Union. They also learned that the vehicle they purchased was on consignment with RSD Motors by a private individual and the title was being held by their finance company. Currently, the Kees do not have title to the 2007 Dodge that they have purchased, nor do they have possession of the 2005 Ford that they used as a trade-in, which they are still being held liable to the recorded line holder that was never paid off by the dealer.

On September 2, 2008, Spencer Cross, counsel for the Kees submitted to the Dealer Board the "Complaint" that had been filed in the Circuit Court for the City of Waynesboro against RSD Motors, Inc. and Rodney J. Price. The Board acknowledged receipt of the Complaint and requested additional documentation in order to complete the review process of the claim. On September 26, 2008, the board received the requested documentation. On April 10, 2009, the Circuit Court for the City of Waynesboro awarded judgment to Andy & Lora Kees against RSD Motors, Inc. and Rodney J. Price in the amount of \$44,707.00 in compensatory damages for the intentional fraud in connection with the purchase and \$2,500 in court costs and attorney fees. In addition, it was ordered that the defendant (Mr. Price) return possession and title of the trade-in (2005 Ford) to the Kees' within 10 days of the order.

On May 21, 2009, Mr. Cross provided the documentation related to the judgment award. In speaking with Mr. Cross on that same day, the Dealer Board staff had two issues of concern. Staff asked if the Kees still had possession of the 2007 Dodge and did they ever receive possession of the 2005 Ford that was used as the trade-in. Counsel indicated that they still had possession of the 2007 Dodge and Rodney J. Price did in fact release possession and title of the 2005 Ford trade-in. Therefore, this would not be part of the equation for recovery from the Fund. On May 30, 2009, Chrysler Financial took possession of the 2007 Dodge and will sell the vehicle at auction in order to recoup their loss. On June 2, 2009, Mr. Kees informed the Dealer Board of the outcome of the 2007 Dodge and provided confirmation of the repossession via FAX.

After carefully reviewing all the documentation, staff has requested that the Recovery Fund Committee and Full Board approve the maximum recovery of \$20,000. On July 6, 2009, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended to support the findings of staff and approve payment of \$20,000.00.

Motion was made by Frank Pohanka to accept the hearing officer's recommendation. Joe Tate seconded. The motion carried unanimously.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for September 14, 2009

The meeting adjourned at 11:16 a.m.